

EXISTING REGULATION 11 AAC 51.045

11 AAC 51.045. Easements to and along navigable and public water (a) As part of a preliminary or proposed written decision under AS 38.05.035(e) before the sale, lease, grant, or other disposal of any interest in state land the department will

(1) list or map the access easements that the department proposes to reserve under this section for public access to and along water determined under 11 AAC 51.035 to be navigable or public water; or

(2) state why reserving an access easement is not necessary to ensure free access to and along water determined under 11 AAC 51.035 to be navigable or public water or why regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) In its final written decision under AS 38.05.035(e), the department will incorporate the list or map prepared under (a)(1) of this section or, in response to public comments or other information known to the department, will incorporate a modified version of that list or map. Unless the final decision under AS 38.05.035(e) determines that reserving an access easement is not necessary to ensure free access to and along the water or that regulating or limiting access is necessary for other beneficial uses or public purposes, the department will reserve access easements as required by this section.

(c) Before the department grants a lease of the land estate or conveyance of land adjacent to any water affected by tidal action, the department

(1) will reserve along that water an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement;
and

(B) extends at least 50 feet from the mean high water line on the side to be leased or conveyed, and on both sides of the mean high water line if land on both sides is to be leased or conveyed; and

(2) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(d) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing any inland water determined under 11 AAC 51.035 to be navigable water, the department

(1) will reserve along that water an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement;
and

(B) extends at least 50 feet upland from the ordinary high water mark;

(2) will retain the bed of that water in state ownership; and

(3) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(e) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing any inland water determined under [11 AAC 51.035](#) to be public water, the department

(1) will reserve, along and on the bed of that water, an access easement that

(A) is continuous, unless topography or land status prevents a continuous easement;
and

(B) extends at least 50 feet upland from the ordinary high water mark; and

(2) may reserve an alternative upland access route, if the department finds that access along an easement reserved under (1) of this subsection might be difficult because of topography or obstructions.

(f) Before the department grants a lease of the land estate or conveyance of land adjacent to or containing water determined under [11 AAC 51.035](#) to be navigable or public water, and if

(1) an existing trail, road, or other overland route provides access to the water but does not already have a reserved easement, the department will reserve an access easement, with a minimum width as required under [11 AAC 51.015\(d\)\(1\)\(E\)](#);

(2) a trail, road, or other overland access route to the water does not exist, but a public road or a public trail lies within two miles of the navigable or public water, and if overland access from the road or trail to the water is feasible, the department

(A) will reserve, from the road or trail to the water, an access easement with a minimum width of 50 feet, or with a minimum width of 60 feet if the department also determines that the need for increased public access to navigable or public water may justify construction of a road along an easement; and

(B) will reserve access easements under (A) of this paragraph, at intervals of approximately one mile, from the water to a public road or a public trail that lies parallel to the water; in reserving these easements, the department may designate

(i) a section-line easement under [AS 19.10.010](#) as an access easement, to the extent that the section-line easement runs on state land, and if the section-line easement provides a practical route to the shore; and

(ii) an access easement along a tributary waterway for access to another water body or waterway, if the easement along the tributary waterway provides a practical and reasonably direct route from the road or trail to the other water body or waterway;
or

(3) a trail, road, or other overland access route to the water does not exist, but a public railroad crossing authorized by the railroad operator lies within two miles of the navigable or public water, and if overland access from the railroad crossing to the water is feasible, the department will reserve, from the

railroad crossing to the water, an access easement with a minimum width of 50 feet, or with a minimum width 60 feet if the department also determines that the need for increased public access to navigable or public water may justify construction of a road along an easement.

(g) If reserving access easements under (f) of this section, the department may reserve additional access easements to a water body or waterway to accommodate existing or anticipated heavy use, to protect portage routes, or to secure access between aircraft landing sites and nearby navigable or public water.

(h) In determining the access easements to be reserved to and along navigable or public water, the department will solicit comments from the Department of Fish and Game and from a municipality or other person entitled under [AS 38.05.945](#) to notice of the preliminary or proposed written decision under [AS 38.05.035](#)(e).